IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 753 of 1996

Shri Mohamed Pathan ..Petitioner

vs.

Municipal Corporation of
Greater Bombay V.T. ..Respondent

Shri S.M.Kamble for petitioner.
Smt.A.H.Chheda with Shri M.R.Kulkarni for
petitioner (absent)

CORAM: A.P.SHAH &
Dr.D.Y.CHANDRACHUD JJ.
30th June, 2005

P.C.

1. This petition arises out of the eviction proceedings under sec.105B of the Bombay Municipal Corporation Act, 1888. The premises involved in this case are Room no.136, Hut No.30 situated at N.M.H.Colony, Shivaji Nagar, Govandi, Mumbai which belongs the respondent Corporation. The said premises were allotted to the petitioner some time in the year 1976. The pitch holder card was also issued inhis favour. The petitioner with his wife Smt.Zebunnissa started occupying the said premises.

2. It appears that the petitioner secured a job in Gulf country and, therefore, went abroad leaving his wife to continue to occupy the premises. It so happened that in the mean time there was a divorce between the petitioner and his wife. It is the

case of the petitioner that somewhere in 1984 his divorced wife, illegally inducted one Mohd.Akhtar in the said premises and, therefore, he filed a suit being Suit No.908 of 1984 in the City Civil Court against the said Mohd.Akhtar to secure possession of the said premises. It appears that the said suit is still pending.

3. It appears that thereafter the said Mohd.Akhtar left the said premises and one Ansari started occupying the premises illegally and without consent and knowledge of the petitioner. In these circumstances, the proceedings for eviction have been adopted by the respondent on the ground of subletting and arrears. During enquiry the petitioner appeared and presented his case. The said Ansari, however, did not respond to the show cause notice nor did he participate in the conduct of the enquiry. The enquiry was proceeded with and the learned Enquiry Officer upheld both the grounds of subletting and arrears of rent and proceeded to pass the eviction order. The petitioner preferred appeal before the Principal Judge of the City Civil Court. As far as the claim of arrears of is concerned, the learned Principal Judge recorded that the petitioner will clear up all the arrears and pay the same to the respondents. The learned Principal Judge also directed that since Ansari has

not challenged the eviction order the respondents shall proceed to execute the same against him. The learned Principal Judge partly allowed the appeal to the extent ordering the petitioner to vacate the said premises subject to the condition that the petitioner shall pay the sum of Rs.527/- to the respondents towards the arrears of occupation charges on or before 16th September, 1991 and make a representation to the concerned authorities for reallotment of the premises in his favour and directed the concerned officer of the Corporation to consider the application for reallotment in the light of the order passed by him. The learned Principal Judge made it clear that the respondent would be at liberty to execute the impugned order against Ansari and then restore the possession of the premises to the petitioner.

4. Pursuant to the order of the Principal Judge, the petitioner made an application to the Corporation requesting for reallotment of the premises. His application came to be rejected by the respondent with a cryptic observation that the application cannot be granted in view of the transfer policy of the Corporation. The petitioner thereafter filed a contempt petition in the City Civil Court. The contempt petition was, however, dismissed by the City Civil Court. The petitioner

has, therefore, approached this court in the present petition.

5. We have heard the learned Counsel appearing for the petitioner. There is no dispute that the petitioner was originally allotted the suit premises and he was living in the premises excluding the period during which he went to gulf country. It is also seen from the record that the petitioner was in no way responsible for inducting the third party in the premises. It appears that the petitioner's divorced wife inducted Mohd.Akhtar and thereafter Ansari. The petitioner cannot be blamed for the same. By order dated 26th August, 1999 the Principal Judge has directed the Corporation to consider the petitioner's application and restore possession back to the petitioner. The only ground for rejection of the application was that it is against the transfer policy. The order discloses total non application of mind and cannot be sustained. The petitioner is not seeking transfer of the premises. He was very much residing in the premises till he went to Gulf country. The third parties inducted by the wife of the petitioner have already vacated the premises. Under these circumstances, we feel that interest of justice will be served if the Corporation is directed to restore the possession of the room to

the petitioner on the terms and conditions to be fixed in accordance with the relevant rules and regulations. The respondent is directed to comply with this order within a period of 3 months.

5. Petition is accordingly disposed of.